

REMARKS

Amendment to Claims

Claims 1-36, 58, 60 and 102-140 are currently pending.

Claims 1, 10, 19, 28, 58 and 60 have been amended. Support for these amendments may be found throughout the specification and claims as originally filed. Specifically, support for these amendments may be found at paragraphs [0163], [0183]-[0186], Figure 10A, and original claims 44 and 76-88.

Claims 76-88 have been cancelled.

No new matter has been added.

Rejection of the Claims

In the September 4, 2007 Final Office Action, the Office has maintained the following rejections:

claims 1-3, 5-9, 10-12, 14-18, 19-21, 23-27, 28-30, 32-36 and 58 were rejected under 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855);

claims 4, 13, 22 and 31 were rejected under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855) and further in view of Buncke (U. S. Patent No. 5,931,855) [sic];

claims 102-140 were rejected under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855) and further in view of Ruff, et al. (U.S. Patent No. 5,342,376); and

claims 58 and 60 were rejected on the grounds of judicially created nonstatutory obviousness-type double patenting as being unpatentable over claim 16 and 22, respectively, of copending Application No. 10/065280.

These rejections are hereby traversed, and reconsideration of the patentability of the pending claims herein is requested, in light of the ensuing remarks.

Rejections under 35 U.S.C. §102(b)/ 35 U.S.C. §103(a)

Claims 1-3, 5-9, 10-12, 14-18, 19-21, 23-27, 28-30, 32-36 and 58 were rejected under 35 U.S.C. §102(b) as being anticipated by or in the alternative, under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855) (hereinafter “Buncke”). Applicants submit that the Buncke reference does not anticipate or render obvious the presently claimed invention.

I. Applicants have amended claims 1, 10, 28, 58 and 60, without prejudice, to require that the barbs have a configuration comprising an arcuate base.

Buncke teaches a method of binding together living tissue using one-way sutures having barbs on their exterior surfaces and a needle on one or both ends. According to the Examiner, Buncke teaches:

“Buncke further discloses the suture 84 has a small diameter which may be in the range of about 100 to 500 microns, the barbs spacing can be from about 100 microns to about 1mm, and the depth of the barbs formed in the suture material can be about 30 microns to 100 micron (see col. 8, lines 12-19). Buncke reference fails to disclose the barb cut angle ranging from about 140 degrees to about 175 degrees, however, what is abundantly clear from the Figure 15 of Buncke drawings is that the cutting blade has a sharp cutting edge, a base and an angle (see Figure below paragraph 5) whereby, said angle of the cutting blade creates the barb cut angle Θ on the suture (see Figure below paragraph 5) (see Office Action dated September 4, 2007 at page 5, lines 11-20).”

However, no where does Buncke teach or suggest that the barbs have a configuration comprising an arcuate base as required by the pending claims.

The Examiner is respectfully reminded that anticipation under 35 U.S.C. §102 requires the presence in a single reference of **each and every element of the claimed invention**, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). Buncke does not satisfy this standard. Accordingly, Buncke does not anticipate Applicants’ claimed invention.

Accordingly, Applicants respectfully request the Examiner withdraw its rejections of claims 1-36, 58, 60, and 102-140 under 35 U.S.C. §102(b).

II. According to the Office, applicants' independent claims 10, 19, 28 and 58 and all claims depending therefrom are obvious in light of Buncke. As stated above, each of these claims have been amended, without prejudice, to expressly recite that the barbs have a configuration comprising an arcuate base. As stated above, Buncke does not teach or suggest the use of a suture having barbs comprising an arcuate base.

Therefore, considered *in toto*, applicants' claims 1-3, 5-9, 10-12, 14-18, 19-21, 23-30, 32-36 and 58 as amended are not obvious over Buncke. Withdrawal of the rejections under both 35 U.S.C. §102(b) and §103(a) is respectfully requested.

Rejection under 35 U.S.C. §103(a)

I. Claims 4, 13, 22 and 31 were rejected under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855) and further in view of Buncke (U. S. Patent No. 5,931,855). Applicants again argue that this combination cannot be correct and applicants suspect that the Office instead meant to include Leung, et al. (U.S. Patent No. 6,599,310).

However, as stated in the previous response, the proposed combination of Buncke and Leung, et al is not a proper combination of references because under 35 USC §103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title shall not preclude patentability under this section [section 103 obviousness rejections] where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

At the time that the presently claimed invention was made, it and the '310 patent to Leung et al. were owned by and also subject to an obligation of assignment to the same person, Quill Medical, Inc. Notably, Leung, et al was filed on June 29, 2001 and issued on July 29, 2003 and as such qualifies as a 102 (e) reference. Accordingly, this statement by the undersigned attorney is sufficient to remove Leung, et al. as competent prior art, and thus, this proposed combination of references does not meet the requirements to establish a prima facie case of obviousness.

Accordingly, the Office is respectfully requested to remove the obviousness rejection based on Buncke in view of Leung et al.

II. Claims 115-140 were rejected under 35 U.S.C. §103(a) as obvious over Buncke (U. S. Patent No. 5,931,855) and further in view of Ruff, et al. (U.S. Patent No. 5,342,376). According to the Office:

“Buncke discloses the invention substantially as claimed except for the cross section of suture body has a circular or non-circular cross section.”

Applicants insist that Buncke does not disclose, teach or suggest the presently claimed invention and introducing the teachings of Ruff does not cure the shortcomings of Buncke. As previously stated, the Buncke reference does not disclose all elements of the presently claimed invention, namely that the barbs have a configuration comprising an arcuate base. Furthermore, Buncke does not provide any motivation to modify the Buncke sutures nor provides any direction for such modification. As such, the proposed combination by the Office does not meet the standards of establishing a *prima facie* case of obviousness and applicants request the withdrawal of this rejection under 35 U.S.C. §103(a).

Rejection under Judicially Created Doctrine of Obviousness-Type Double Patenting

Claims 58 and 60 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16 and 22, respectively, of copending application No. 10/065,280. Applicants traverse this double patenting rejection. In any case, until the only remaining rejection is the obvious-type double patenting, applicants will delay filing a terminal disclaimer.

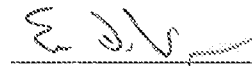
Petition for Extension and Fees Payable

Applicants request of four (4) month extension in responding to the Notice of Panel Decision from Pre-Appeal Brief Review, thereby extending to date of response from April 15, 2008 to September 15, 2008. The petition fee of \$1,640.00 is paid herein by electronic funds transfer. In the event of any underpayments or overcharges, U.S. Patent and Trademark Office is hereby authorized to charge or credit such fees to Deposit Account No. 13-4365 of Moore & Van Allen, PLLC.

Conclusion

Applicants have satisfied the requirements for patentability. All pending claims are free of the art and fully comply with the requirements of 35 U.S.C. §112. It therefore is requested that Examiner Nguyen, reconsider the patentability of all pending claims, in light of the amendments and distinguishing remarks herein and withdraw all rejections, thereby placing the application in condition for allowance. Notice of the same is earnestly solicited. In the event that any issues remain, Examiner Nguyen is requested to contact the undersigned attorney at (919) 286-8000 to resolve same.

Respectfully submitted,



Eric F. Wagner
Reg. No. 53,730

Moore & Van Allan, PLLC
P. O. Box 13706
Research Triangle Park, NC 27709
Telephone: 919-286-8000
Fax: 919-416-8199
Attorney Docket No. 013341.000020